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An Analysis of a Responsum of R. Nissim of
Kairouan on the Bavli Rosh Hashanah 2a-b

by

Ben Beliak

Thesis submitted in partial fulfillment
of the requirements for the Degree of
Master of Arts in Hebrew Letters and
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DIGEST

There are often whole periods in Jewish history for which we have little or no information. The kind of historical information that we have found is the result of painstaking reconstruction of documents. When that is accomplished then the job of the historian begins. This paper is a mixture of both endeavors.

This paper attempts to place the life and work of R. Nissim, an eleventh century rabbinic authority, in the context of his community, his time and the general fortunes of the Jews of that era. By an evaluation and translation of a commentary to the first lesson of Rosh Hashanah, we hope to gain an indication of the methods and pedagogy of R. Nissim.

Very little concrete biographical information is available detailing the lives of individuals that lived in the eleventh century. What information we do have comes from the bits of information scattered throughout the Geniza. In this paper, while we have not presented new information, there have been suggestions as to how to view the material we have.

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DIGEST I.

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The Jewish communities of tenth and eleventh century North Africa form a unique epoch in the history of the Jewish people. The city of Kairouan, located 80 miles south of modern day Tunisia, was one of the most important in North Africa. Numerically the Kairouan Jewish community was the third largest Diaspora community after Babylonia and Egypt. This community flourished in the context of the Muslim Fātimid Empire, retaining its ties with both the Gaonic Academies of Iraq (Babylonia) and Palestine while developing its own local institutions. Our survey will attempt to focus on the economic and educational institutions of the Jewish community. We will look at the activities of one native member of the city's scholarly elite, R. Nissim b. R. Jacob Ibn Shahur (c.990-1062) through an examination of a fragment of his commentary to the first lesson of Tractate Rosh Hashanah of the Babylonian Talmud. This commentary was found in the Geniza (meaning: storeroom) of the oldest synagogue of the Palastinian Jewish Community of Fustat-Cairo.¹ We will begin by exploring briefly what the Geniza was.

When a historian attempts to reconstruct a period in history the most essential raw material for him are records. These include letters, coins, deeds, receipts and testimonies of people who lived in a particular time. This written evidence is, of course, only part of the available material. Often historians have had to rely solely on the self-conscious testimonies of defenders or detractors of particular regimes.² These reports are often skewed to present posterity with an apologia. It is rare, indeed, when we have documents that reflect the every day lives of groups or classes of citizens to contrast with accounts from courts of kings. Part of the uniqueness of the Geniza are their seemingly nonchalant, unconscious character. But why? The Geniza of Cairo was the

product of hundreds of years of preservation of the holy word. Muslims, Christians, but especially Jews regarded the language of their faith as holy, so even the most secular of documents which might contain the name of God, were not destroyed but buried or placed in a room after they were no longer of any use.

In the late nineteenth century, the Geniza of Cairo was discovered in a room adjacent the old Palastinian Synagogue. Many parts of it were sold to individuals as well as libraries scattered all over the world. Some were published in memorial volumes, popular journals, separate collections; most have remained in cases. Unlike archives where the materials are collected, organized and boxed for eventual use, hundreds of years of helter skelter collection and later the searchings of antique dealers further added to the confusion in which the documents were found. For example, our document has arrived to us from the Taylor-Schechter collection and an antique dealer in three separate pieces. The Taylor-Schechter collection of the Cambridge Library, by far the largest, is the result of Solomon Shechter's at first reluctant but soon zealous retrieval of the largest group of documents. The history of the collection of these documents and their subsequent neglect, their study and their continuing importance for a critical appreciation of Jewish life and the light they spread on non-Jewish life are discussed more extensively in A Mediterranean Society by Dr. Goitein.³ Dr. Goitein has written the most integrated and extensive study reflecting the use of the Geniza documents. The city and citizens of Kairouan emerge as central figures in the documents of Geniza.

The city of Kairouan must be viewed as part of the emerging

pattern of commercial and imperial cities of Muslim North Africa and the Mediterranean World. In the ninth, tenth and first half of the eleventh century, Kairouan served as the economic center for much of North Africa. Agricultural exports, especially olive oil used for cooking and lighting were exchanged for spices and flax.⁴ For Imperial Rome the North African coast had been the bread basket supplying wheat and other edibles for its circus hungry inhabitants. A similar pattern of supply to the world markets of that time continued not in wheat but cloth.⁵ Kairouan was a major inland port. The English word caravan is probably the etymological decendent of the city's name.⁶ Kairouan was the jumping off point for western caravans to the cities and villages of the interior: Fez, Sijilmasa, Tahert and many others. Kairouan and al-Mahdiya, its twin city, existed during the late tenth and first half of the eleventh century in much the same convivial relationship as Fustat-Cairo and Alexandria, respectively. Through its economic development and geographic location Kairouan and al-Mahdiya became centers rather than peripheries of power so much so that throughout Jewish sources the words "Afriqiya" and "Erets Ma'arab" came most often to mean not the continent of Africa, but Kairouan and al-Mahdiya proper.⁷

It seems that Jews settled in Kairouan early in its development. (Our earliest sources are from the ninth century reflecting the communities correspondence with the academies of Babylonia.) The city itself is said to have been founded just fifty years after the Islamic religious forces of 'Uqba ibn Nāfi', the first Arab conqueror of North Africa, crashed across the continent.⁸ The first 1000 Jewish settlers may have been ordered there in 690 by the Umayyad Caliph 'Abd al-Malik ibn Marwan' through a levy carried out by his brother, the governor of Egypt.

Kairouan continued a general pattern of growth under the Abbassids and Aghlabites.⁹ In 909 the city passed to the Fātimids, who made it their capitol for a time.

The first Fātimid Caliph 'Ubayd Allah al-Maḥdi, in 915 founded the new capitol city al-Maḥdiya. This port city marked an important turning point in the history of the Arabs. "Until then all the important cities founded by the Arabs (Fez, Tlemen, Tahert and Kairouan) had been in the interior, far from the coast, as a protective measure from the threat of the Byzantine navy." With this single stroke Caliph al-Maḥdi served notice of his partially realized intent to expand his empire into a maritime power eastward and into Sicily. Soon there was a thriving Jewish community in al-Maḥdiya and Kairouan both, though Kairouan was always the center of Jewish life. Far from having reduced the importance of Kairouan, the founding of the port city aided the city and economic trade in general continued to expand, until the destruction of Kairouan in the 1050's. With Fātimid rule, had come the stability and flowering that was the context of Kairouan's development as a cultural, religious and economic center.¹⁰

With the Berber tribes temporarily in check, Muslim authorities in conjunction with the merchant interests, both Muslim and non-Muslim developed communications: relay animals for postal services, protection and supply stations for caravans. Beacon stations were maintained in cooperation with other Muslim empires that allowed news to be flashed from Ceuta on the straits of Gibraltar to Cairo with amazing speed.

When the capital of the Fātimids moved again in 969, this time to Cairo, the pattern of trade continued even though in a pattern of decline due especially to the loss of business from the royal houses and part of the army.¹² Gradually the trade routes also began to shift because of a technological advance, the building of larger ships.¹³

In the 1140's the governing agents of the Fātimid rulers, the family of Banū Zīrī, split away from the empire. The Fātimids responded to this rebellion by encouraging the Berber tribes of Hālāl and Sulaym to raid the area. Kairouan was destroyed in 1057.¹⁴ by the constant rival pressure from the hinterlands. Though the times prior to Kairouan's destruction was not entirely peaceful, at least the minorities, Christians and Jewish, were not seriously hindered in their religion or lifestyle.

Within the century and a half of relatively tolerant and liberal Fātimid rule, Jewish learning and community life blossomed. The explanation for this is to be sought partly in an understanding of the demographic facts of the Fātimid Empire, an amalgam of many minorities whose talents and energies were used in government service. Even the restrictions placed upon Jews to remind them of their low state as "non-believers" were often ignored. We read of an instance when Abraham b. 'Atā, the Nagid or political representative of the Kairouan Jewish community during the reign of Banū Zīrī family, appears before the Mufti on official business and is thrown out ostensibly for not wearing black shoes, ghiyar, part of the proscribed dress code for minorities. There were to be sure dangers in trade, especially from pirates, and constant internicine conflicts among the Arabs. On the whole, the Geniza

documents indicate that the description of the Spanish traveler Ibn Jabayr of the primacy of economic considerations during fighting between Muslims and Christians during the Crusades applies here too:

"Likewise, in Muslim territory, none of the Christian merchants is forbidden entrance or is molested. The Christians impose a tax on the Muslims in their land, which gives them utmost security, while the Christian merchants also pay (customs) for their goods in the land of the Muslims. Reciprocity prevails and equal treatment in all respects. The warriors are engaged in their wars, while the people are at ease."¹⁵

Even among competing factions of Jews -- the Rabbinites and Karites -- economics were more important than ideological differences at this time. The Tāherti family, Rabbinites, and the Tustari family, Karites both from Kairouan and later from Egypt, maintain close, even warm contacts for generations. The Tāherti family, then in Kariouan, addresses the Tustari family:

"I am writing to your eminent elder and leader of the profession -- may God prolong your life, make your welfare and happiness permanent, and increase his b(enefactions) to you and for you -- on Marhesvan 9th.¹⁶ (Early October c.1010) I am well and in good health, thank God. Your letters have arrived, my lord -- may God support you -- and I was happy to learn that you are well. I praised God for this¹⁷ and asked him to make this permanent in his grace."

The letter goes on to place an order for merchandise, hinting at a mutual threat, the instigation of the ghiyar and related dress code restrictions mentioned above. The threat of discriminations often remained to be assuaged by a timely bribe to Moslem officials.¹⁸

The above quote does not negate the loyalty of Jews to corporate religious life in Jewish and other circles. Kairouan figured as one of the strongest and most spiritually eminent of religious centers in the Jewish world of that time. Its merchants were learned, loyal Jews.

"It was not unusual for a student to study all his life while pursuing other 'worldly' endeavors."¹⁹ For these scholars the spreading of knowledge was also serious business. The texts produced in Kairouan by it's scribes were sought out commodities. In a letter to Nahray b. Nissim, a prominent merchant scholar who moved to Alexandria, Egypt from Kairouan, we read of his on going interest in books especially those of our R. Nissim. His contact in Tunisia informs him of the slow progress in copying the work of the then ailing "Light of the World," R. Nissim. "I wish to inform you, my lord, ...that I asked a friend in Susa to buy parchment and to deliver it to a copyist. Unfortunately they have only one copyist there, who also teaches children so that he can devote only a part of his time to copying." The scribed artists of Kairouan were so famous that one merchant for want of some livelihood takes up book copying in Jerusalem to fill orders from Egypt.^{20, 21}

If this eminence was true of the merchant class, how much the more so for its scholars. Some of the earliest existing material on Kairouan written by one Pirqōy ben Bāmbōy, the disciple of Yehuday Gaon, speaks of learning in this new oasis: "...and we have heard that the (Almighty) has favored you and has established houses of study in all the cities of Afriqiy and in all the localities in Spain and that the Holy One Blessed Be He, has granted you to meditate upon the Law and occupy yourselves with it day and night."²² This eighth century letter from the Sura Academy is echoed by yet another from a Sura student of R. Saadia, speaking about the people of Kairouan who were "students of Bible and Mishnah, great scholars".²³ If we are to compare this with a description by a twelfth century Babylonian Jewish scholar writing in Egypt about the levels of education, Kairouan was certainly unusual:

"If we disregard uneducated persons, people can be classified in three categories: the broad masses, scholars and doctors. The masses have learned the written and the oral law, namely, the Five Books of Moses and Saadya's prayerbook (which comprised also the religious injunctions connected with prayer and the keeping of the Sabbath and the holidays) the scholars have studied, in addition to the Pentateuch, other sections of the Bible, as well as the "ordinances", that is codified laws; the doctor is the highest level, a man who has made himself familiar with the Mishnah, the Talmud, and their commentaries."²⁴

Even allowing for some exaggerations and a lack of precise formulation, the student of R. Saadia is describing Kairouan prior to its great renaissance in the tenth and first half of the eleventh century, under the tutelage of the Ibn Shahun family, R. Nissim and his father, R. Jacob and R. Hushiel and his son, R. Hanannel.

Early in Kairouan's history, it became a place of refuge for deposed leaders of the Babylonian community.²⁵ The Exilarchis institutions of Babylonia were a frequent source of bitter rivalries. Two of these illustrious scions of the house of David find their way to the west. Natronay bar Habibay in the first quarter of the eighth century and Mar 'Uqba at the turn of the tenth century both spent some time in Kairouan.²⁶ The people of Kairouan apparently responded with an hospitable reception. We read in one source: "It was customary in Kairouan for the chief Mar 'Uqba to have a seat of honor reserved for him in the synagogue next to the ark, and after a priest and a Levite had read their portions of the Torah, the Torah scroll would be handed down to him."²⁷

Another traveler in the late Ninth century appeared in Kairouan raising questions and the curiosity of its citizens, regarding the mysterious customs, traditions and origins of Eldad ha-Dani from Havila,

the land of Gold, near Ethiopia. This prompted a consultation with Zemah Gaon. Eldad ha-Dani professed to be a member of the lost tribe of Dan, who with the tribes of Naphtali, Gad and Asher had formed an independent kingdom. The Jewsoof Kairouan were particularly curious to know about this visitor's laws of shehitah and terefah (relating to the laws of ritual slaughter and of preparation of permitted and forbidden foods). The Gaon stated that the possibility of different traditions existed. The Kairouan community had sought clarification of questions related to shehitah and terefah before. Pirqōy ben Bābōy, the author of the previously quoted epistle on Kariouan's favorable circumstances, enabling them to engage in study and meditation, mentions among the "apostatic customs" (שׂוּעָה עֲשִׂיָּה) their persistence in eating meat with adhesions of the lobe of the lungs (sirah). This kind of meat was absolutely forbidden according to the Babylonian traditions of Yehuday Gaon's Academy,²⁸ while another Gaon, Jacob, a contemporary of Yehuday did allow the examination of the lungs by Palestinians. Gaon Jacob reasoned that otherwise people would become apikorsim, willful offenders against religious law.²⁹

Many of these early questions are sent in the name of "the people of Kairouan". Apparently this ad hoc system of approaching the academies was frowned upon for causing much confusion among people, the previous responsum is a case in point. With emergence of Mar Nathan ben R. Hananyah in the late Ninth century, we have the first recognized regular correspondent of the academies of Babylonia. Alluding to the former practice of approaching both academies, Gaon Nahshon bar Sadoq commends the sobriety of Mar Nathan's leadership. He prefaces his remarks by stating that there are twenty parsangs that separate Sura and Pumbeditha. One academy

doesn't know what is going on at the other. This could lead to a desecration of the Divine Name:

"R. Nathan ben Hananyah, whose soul rests in Paradise, and your earliest rabbis, whose minds were directed to Heaven, never did so. They wrote questions for thirty-seven years, either all to us (i.e. to Sura) or all the Pumbeditha, or part to us and part to Pumbeditha, but they never addressed the same question to both Academies; to do so is offensive to Heaven, as was the action of King Ptolomy³⁰ (who is said to have ordered seventy individual, independent scholars to translate the Bible simultaneously, without consultation)...we are warning you that if your questions are to both of us, that is us and Pumbeditha you will receive no answer from Pumbeditha or from us.³¹

After this responsum, the contents of which have been lost to us, there is an increasing amount of material throughout the Tenth century, there is an increasing amount of material throughout the tenth century leading to the high water point of Kairouan, the presence of R. Jacob, the father of R. Nissim, and R. Hushiel and his son R. Hanannel. Though much of the material should be understood as theoretical,³⁴ by the tenth century the intellectual respectability of the scholars of Kairouan is beyond question if in nothing else than that they can ask the pertinent questions reflecting a thorough knowledge of law and tradition.³² Many of the questions to the Gaonim were prompted by the zeal of study and an eagerness "for sanction and approval from some higher spiritual authority",³³ not by the need for clarification of actual cases. The result of this constant communication between cities like Kairouan and the academies was an amazing uniformity in basic liturgy, religious practice, and whatever secular legislation the communities could apply within the structure of the authorities.³⁴

But, how are we to understand, for our world is far different from the world of abiding loyalty that the Jewish citizens of Kairouan and many other places retained across more than one political boundry to

the Academies of Iraq and Jerusalem. The answer to this question lies in the nature of what the academies were and how they functioned in the Islamic Middle Ages.

Having at least embryonically emerged in Hellenistic times, the Academies had by the tenth and eleventh century proven to be resilient, viable institutions. Their authority was based on their study of the oral and written law. The former had been compiled by the Academies as the cumulative interpretation of the latter, all of which was viewed as divinely inspired.³⁵ In the political structure of Islam Jews, including in that category Samaritans and Karites, as well as Christians, were protected subjects; recognized by the ruling authority as having the right to practice their religion as long as they paid their poll tax and submitted to the humiliating Islamic restrictions, some of which were mentioned above. Excluding the domain of criminal law, the rest was left in the hands of the religious authorities. This left the broad areas that touched the everyday lives of most members of the community -- family law, commercial transactions, the upkeep of community institutions such as the synagogue and schools, and caring for the social needs of the destitute, orphaned and widowed. This social structure was, of course, premised on the cohesive sense of each individual to the community. The coercive alternatives available to the community were almost non-existent, without re-call to police forces of the Islamic state, which were only reluctantly invoked. Social pressure and deep commitment born out of genuine religious loyalties were the basis of this elective system.

The Academies functioned with the office of the Gaon at its head in

a hierachial superstructure. The recognized religious authority derived its financial viability from the support of the people and their continued confidence in the learned, spiritual erudition of its Gaonim. At worship assemblies that recognition was formally expressed. Todays liturgy still contains a form of the Aramaic prayer recited at one time with the insertion of the names of the Gaon and several principals of the Academy, especially the successor to the Gaon. The taking of permission (reshuth) at the beginning of the grace was another public expression of recognition. These forms were more than formalized functions for similarly when a devotee wrote saying that he prayed for the Gaon it was a form of official regognition.³⁶

The Academies are often called Yeshivat, but the sense in which they functioned can more correctly be conveyed by a threefold rubric: as seats of learning, high courts and parliaments. These authorities were often delegated to local bodies, such as the one in Kairouan, called a midrash, or bet midrish, similiar to the Muslim midrasa. The local institution functioned much like its superior institution in the area of the interpretation of the Talmud, the accumulated authoritative wisdom from the Adademies. Knowledge of the Bible was assumed to have been the acquired domain from the elementary education which was preparatory to higher level studies. Teachers in the academies as well as those in the local institution were ranked according to their progress in studies. In the Babylonian Academies these studies were carried on at certain fixed times of the year and were called the Kallah. During the spring Kallah questions from the Diaspora were discussed and answers formulated by the scribes of the academy. This task was often a kind of internship

for sons of the Gaon. The Gaon, the av, generally the successor designate who acted as president of the court and the scribe signed or included greetings in the responsum. Thus the responsum received the standing of a judicial decision of a court of three. The community receiving the authoritative decision knew who the dolphin was while at the same time becoming acquainted with the new generation of up and coming scholars. Others who served the academy were the interpreters -- meturgeman or tergemen who acted as broadcasters repeating remarks of the Gaon to the sometimes large audiences. Often these men were mere functionaries, live tape recorders, but occasionally they would convey ideas and explain texts. The office of rosh ha-seder, head of the row, was a kind of upper-management recognition extended to accomplished scholars, but often also to members of a local midrash, like Kairouan. The reference to row heads refers to the seating arrangement of the faculty signifying their prominence as well as emoluments. The title alluf, distinguished member, was also born by exceptional members of the academies and its constituent schools. The debate in the learning was open to title bearing scholars and possibly correspondence opinions. In this vein, Hay, the Gaon of Pumbeditha, one of the most capable men to have held the position, writes to Kairouan in Elul of 1006, he mentions with some surprise that a new local scholar Mar Rab Hushiel, son of Mar Rab Elhanan, has: "not sent his scholarly observations to the gate of the Academy, in order to participate in its debates...that our whits might be sharpened by his marvelous questions and that the students might understand them and knowledge be increased...may the Alluf obtain a letter from him and transmit to us; this will be for us a delightful gift, a welcome present."³⁷

The Jerusalem Academy also had its hierarchy of scholars led by a Gaon and Thirds, Fourths and Fifths. The Academy called itself the *havura*, The Corporation, or *Kavurat he-Šeder*, The Righteous Corporation. The *Havura*, being poorer, devoted itself to continuous study without recourse to the seasonal gathering of their more prosperous part-time counterparts, whose tradition of the Kallah allowed time for other pursuits.

With the task of interpretation of one revelation by three institutions and their constituency school how can we speak of unity of the people? We must remember espousal of one dogma or set of right beliefs was not the issue, for all considered its sister academies to be equally orthodox but reserved the right to differ over matters of ritual and legal usage. "The fights between Gaonim and Exilarchs were fundamentally on who should be the effective exponent of the halakhic system."³⁸

To be sure relations between academies and their local midrash or between academies were not always so amicable, especially when the economic pressures aggravated the situation. Sherrira Gaon, Hay's father, writes to a younger contemporary of R. Nissim, Elhanan b. Shemarya, reprimanding his conduct and reminding him that he is only a dean, and not a president of the academy: "How can a body remain intact when the head is sick! The body goes after the head."

On the otherhand (head) we have the example above and more of R. Nissim and his relations with the academy which seem to have been cordial and friendly. In the commentary below, he is referred to as *HaRav HaRosh* which S.D. Goitein has suggested "should not be translated as 'chief rabbi' but 'grand mufti' meaning that he was the highest ranking scholar in the

country authorized to give legal opinions.³⁹ This translation is in keeping with one of Dr. Goitein's principal suggestions and achievements in supplying a context within Islamic society for previously disjointed and endless laundry lists of information.⁴⁰

Having mentioned the title of our illustrious author, the narrative of his life, works and relationships with the academies begins more properly not with him but with a brief word on the world of his fathers: R. Jacob, his parent and R. Hanannel, an older contemporary of R. Hushiel.

We know very little of the personal lives of any of these men. Based on the story related in Ibn Daud's Sefer Ha-Qabbalah we have some indication that R. Hushiel was not a native of Kairouan and may have come to North Africa from another part of the world that was unaffiliated with the Academy System, as alluded to in Hay Gaon's letter quoted earlier.⁴¹ R. Hushiel apparently introduced an independent method of study that emphasized the importance of the Jerusalem Talmud. This method is reflected in his pupil and son R. Hanannel as well as in our R. Nissim. R. Nissim's father, R. Jacob was the leading scholarly figure until the arrival of R. Hushiel. R. Hushiel apparently succeeded him followed by his son, R. Hanannel.

R. Hanannel's commentary to the Talmud reflects his contact with the Academies from which he often quotes Hai Gaon, his father and others at times without acknowledgement. His commentaries gained wide circulation partly because of their terse Hebrew style.⁴² He held the title that was common to all four of these men successively -- Resh Bey Rabbanan which was the pinnacle of scholarly authority signifying his pre-eminence as local scholar and treasurer of the Academy Pumbeditha.

Again according to Ibn Daud, R. Hanannel was blessed (cursed) with daughters and great wealth,⁴³ which he is said to have acquired as a physician and as a silent partner in many business ventures.

R. Jacob, R. Nissim's father is probably the least known of the four sages of Kairouan's hey day. R. Nissim on the other hand emerges as a most intriguing figure. We have considerably more information about his personal life but hardly a complete notion. R. Nissim maintained close ties with not only the Academies but also Samuel Ha-Nagid of Spain. R. Nissim's daughter married the son of Samuel Ha-Nagid, a marriage that was apparently an unhappy one. On the occasion of the wedding R. Nissim traveled to Spain to celebrate this special event, where he taught briefly.

As a scholar R. Nissim was most prolific, authoring numerous volumes that have recently been re-discovered in fragmentary manuscripts. The most important of R. Nissim's work is Sefer Mafte'ah which was intended as an extensive guide to aid students to unlock difficult passages of Talmudic literature. Explaining the methodology of his book, R. Nissim remarks:

I have seen many students in our time who failed to take cognizance of that factor and in vain looked for the demonstration (of each statement in its place). Hence they could not comprehend the law which remained a puzzle to them. I have decided, therefore, to assemble all these puzzling passages in a book which would serve like a key to them, so that each student in need of finding further references should be able to locate them without effort.⁴⁴

Other works written by R. Nissim include: Hibbur Me-ha-Yeshu-'ah his best known work. This collection of folktales was written to give

consolation and solace to people in tribulation. R. Nissim is credited with having originated the social short story in Jewish Literature.⁴⁵ This book was touchingly dedicated to a son-in-law who was widowed.⁴⁶ Megillat Setarim is another of R. Nissim's seminal works that serve as a ground source for many latter halachic authorities including R. Jacob Tam's Sefer ha-Yashar and Sefer Ha-Pardes of the Rashi School.

Finally our text, which is apparently part of a genre of commentaries written in Arabic and Hebrew to fulfill specific requests. In addition to our commentary on Rosh Hashanah there are other fragments that include explanation to: Tractates Berachot, 'Eruvin and Yevamot. Our passage is of particular interest in that this is one of the few passages that R. Nissim mentions his teachers by name. R. Jacob, R. Nissim's father is not mentioned and this has led some to speculate that he must have died early in R. Nissim's life.⁴⁷

In the ensuing translation and analysis we will refer to other details of R. Nissim's life and work.

CHAPTER II

An explanation of the first discussion of the lesson of Rosh Hashanah, expounded by our rabbi Nissim the son of rabbi Jacob, the "chief rabbi"⁴⁸ may his memory be a blessing. In consonance with the tradition that he (Rabbenu Nissim) received from his honored and noble mentors upon whom the pillars of the world's foundation rest, as the columns which support the bedrock of the world,⁴⁹ our teacher and our master Rabbenu Hushiel the distinguished "grand mufti" may his Rock protect him and grant him many days and years.⁵⁰ And our teacher and our master Rabbenu Hanannel, his beloved son, the outstanding and distinguished example, from whom the law shines forth to all Israel⁵⁰ -- his Master will requite him.⁵¹ As the new heavens will remember his name and memory,⁵² spreading abroad his light -- it will not be extinguished. Neither will his soul be troubled⁵³ may his guardian not sleep⁵⁴ and in the hollow of His wings He will protect him⁵⁵ and aid him in the face of his adversaries.⁵⁶ Upon him shall his crown shine.

A request for an explanation of the Talmudic discussion from our master and our teacher, R. Zadok, the beloved and dearest breathren⁵⁸ who lives in the land of Israel -- May He (the Lord) watch over his fortress and support his righteous right hand and fulfill his portion. May (R. Zadok) drink spiced wine⁵⁹ and from the milk of Torah receive his sustenance. May He (the Lord) forfend his desolation instead inscribing him in the Book of Life. May all his enemies be "rubbed out".⁶⁰ They shall not be heralded but they shall swallow his spittle. From the

clutches of Sheoul he will be redeemed.⁶¹ In Torah and Mitzvot he will grow strong. May all this be his good fortune. The son R. Yihya, may his repose be in the Eternal Eden.⁶²

"There are Four New Years. On the first of Nisan is the New Year for Kings."⁶³

Our rabbis, blessed be their memory, taught that (although) the Biblical texts teach us that Nisan is the first month of the year in verses such as: "It is for you the first month"⁶⁴ and later on the Bible says "the first month is Nisan."⁶⁵ The order of all the months that are mentioned in the Torah pivot on these Biblical verses. As a result one understands in the ninth month which is Kislev, the tenth month which is Tevet, and so forth in many other examples. Indeed we have an authoritative tradition at Mt. Sinai from the divine messenger substantiating that in addition, it (nisan) was also designated the New Year of Kings.⁶⁶ Since it is not possible that what we received in the transmitted tradition would be without any specific purpose, but since it is obvious to us that if there were no specific purpose, -- and we do have knowledge of its purpose from the perspective of reason and law, there would have been no need to transmit it to us. We have sought to clarify the purpose in this (the Gemarah's question in a more complete way...) the question is: "For kings, what is the application of this?" And it was explained by R. Hasda, he said the purpose that accrues to us is the knowledge of dating documents.⁶⁷

He (R. Hasda) tried to deduce this based on the Mishnah found in

Mishnah She'vit:⁶⁸ "Antedated documents of indebtedness are not valid but postdated documents are valid."

In the Gemorah discussion of the Westerners⁶⁹ it was taught that the difference is: "one holds that we calculate from Nisan and the other holds that the calculation is from Tishri. In what way do they indeed differ? They differ only over when the documents should be dated. For example, someone transacted a loan in Iyar and wrote the date as the second year of the reign, he later sold in Heshvan and he writes the date as the second year in the reign. He who calculates from Nisan would say that this transaction is an antedated loan (document of indebtedness). (Therefore it is not valid.) He who calculates from Tishri would say that this transaction is an antedated sale."

And we learned incidentally through this explanation of the dating of documents that at that time, time was not kept as we do now, by dating documents according to the era of the creation of the world, but they would establish the year of the contemporary reign of the king. Thus they would write: year such and such of King X.

We find it essential to know the date of two (uncontested) documents in order to decide the legality of payment to the party whose documents are dated earlier. This is according to our general procedure that whoever has the earliest date on his document is supported in his claim.⁷⁰

In the event of a conspiracy to defraud⁷¹ involving the borrower

and the lender to abrogate the rights of someone, who had a valid earlier date thereby giving precedent to another who was not supposed to have prior claim; should we come to know about this we adjudicate to invalidate the fraudulent document and we uphold the proper valid claim, thus advancing the basic intent of the law. The fraud in this matter can happen in many different ways but I will cite two ways that will serve as an example in this connection, but one could use them to deduce other cases (not covered in the two examples.)

The first example is as follows: Reuven has a house that is worth four hundred dinar. Reuven went to the scribe in the month of Adar in the first year of King X and he had written for himself a document of indebtedness payable to Shimon for the sum of two hundred dinar and the witnesses accepted his testimony without symbolic delivery (kinyan).⁷² The scribe involved in this matter might be assumed to be either mistakenly involved or a conspirator in the fraud. After the witnesses signed the document they left it with him (Reuven).⁷³ A while later in the month of Nisan, that is the second year of the same king,⁷⁴ he (Reuven) borrowed from Levi two hundred dinar and signed a bill of indebtedness for it. In Iyar⁷⁵ (the next month after Nisan of the second year) he (Reuven) borrowed from Judah two hundred dinar and drew up a contract. Subsequently in Tammuz⁷⁶ he (Reuven) went to Shimon to borrow two hundred dinar from him. And Shimon said to him (Reuven): "Isn't it true that all your assets are not worth more than four hundred dinar and you already have two documents of indebtedness outstanding owed to Levi and Judah and they precede me in payment, from what could I collect my money?"⁷⁷ At this point he (Reuven) pulls out for him (Shimon) the document that he had already written for him (Shimon) in Adar.⁷⁸ And he (Reuven) says to him

(Shimon), I already drew up by myself a document of indebtedness for you in Adar of the past year; you will be the first to be repaid before Levi and Judah. When this⁷⁹ becomes manifest to the judge that the matter happened this way he will invalidate the document and he adjudicates that his claim (Shimon's) not to be paid at all. He (the judge) will award Levi and Judah payment and not to him (Shimon).

And they have stated (in another place in the Talmud):⁸⁰ "and the witnesses testified without symbolic delivery⁸¹ and the scribe involved in this matter might be assumed to be either mistakenly involved or a conspirator in the fraud." Since when one transfers his ownership he is obligated from the moment of symbolic delivery. As for the scribe, he is forbidden to the first place to write a document for a borrower when the lender is not present except in the instance of deeds of transfer wherein a person obligates just himself. Since this transaction was without symbolic delivery it was not proper for him (the scribe) to draw up the document until the lender was with him (the scribe). If he (the scribe) drew up the document without either intentional malice or cognizance, he is considered mistaken and if he was knowingly involved he is considered a conspirator. And there are other ways that I have alluded to in my words and they are worth following.⁸²

The second way of the two examples that we mentioned is that Reuven previously borrowed from Shimon two hundred dinar in Nisan, at the beginning of the ninth year of King X. In Tishri⁸³ of the same year he (Reuven) repaid him (Shimon) the two hundred dinar and recovered the bill of indebtedness from him (Shimon) and retains it (the document) for himself.

He (Reuven) borrows from Levi in Heshvan⁸⁴ two hundred Dinar and in Kislev (Reuven borrows) from Judah two hundred dinar and when Nisan rolls around, this is the beginning of the tenth year of the King. He (Reuven) went to Shimon) and asked him to loan him two hundred dinar. Shimon was reluctant to lend him (Reuven) anything since there preceded him the prior claims of Levi and Judah. Reuven said to him (Shimon): Behold I have the document that you already drew up when I borrowed from you last Nisan. Take it (the document) and lend me on the money basis of it and you will be the first to be paid and collect, before Levi and Judah.

If this plan is discovered by the judge(s) he must invalidate this document also. With regards to the first aspect our sages, blessed by their memory, said⁸⁵ we apprehend lest the loan have been written up in Nisan⁸⁶ and the loan not actually received until Tishri⁸⁷ and as a result he (the lender) would come to unlawfully seize bought property.⁸⁸ The second aspect they said: "a note which was given for a loan that was repaid cannot be used for the purpose of another loan because the obligation (of the first loan) was cancelled (on its being repaid). (The invalidity of the note) follows from the fact it is antedated, for we have learned in a Mishnah -- antedated notes of indebtedness are invalid."⁸⁹ In conclusion, we have an explanation of notes of indebtedness that are antedated. They would not have been invalidated except that their intended use is to damage legitimate rights and give unfair preferences, causing the loss of money to one who deserves to have priority. Therefore he (the judge) should decide to invalidate the note of indebtedness. Any matter that occurs with notes of indebtedness like this one will be invalid.

We do not collect on items that have a lien against them. A little hint of this is suggested in the Gemorah discussions of Shnaim Ohzim and Get Pashute.⁹¹ If I were to deviate from my exposition of this matter that I'm concerned with I would continue the arguments to their systematic conclusion. Although postdated documents of indebtedness are considered valid on the assumption that they cause no one monetary loss and they also do not damage the interests of the creditors. By my life, at times they (post-dated documents of indebtedness) do sometimes damage the creditor if someone has already usurped him. But since the damage and loss is as a result of his own doing we don't concern ourselves with that.⁹² An explanation of this matter is that Reuven borrowed from Shimon one hundred dinar in Nisan and didn't demand of him (Shimon) to draw up a document until Tishri, he (Reuven) previously borrowed from Levi⁹³

The reason for the calculation⁹⁴ that was recounted to us concerning the building of the Temple⁹⁵ was to recall on account of it two dates, one of them is the Exodus from Egypt and the second is the reign of Solomon. Since there is no doubt as to what was intended in the recounting of the first date even though it is not conceivable that there would be needless duplication in scripture without some purpose.⁹⁶ The purpose of this is for⁹⁷ . . . date of King Solomon. The second (purpose) is for the date of the Exodus from Egypt that is mentioned first and thus it is known that the two dates are both in one month.⁹⁸ And since the date for the Exodus from Egypt is in Nisan it is known that the Kingdom of Solomon is also in Nisan, because of this reason scripture has combined both together, since they are in the same month. We raised an objection⁹⁹ -- what is the reasoning for the counting of the Exodus from

Egypt from Nisan? In order to calculate the reckoning of kings and other related matters but perhaps it (the reckoning) is from Tishri. Scripture is brought to bear that proves it would be inconceivable to calculate the Exodus from Egypt in Tishri, and it (the scripture) already mentions the death of Aaron¹⁰⁰ in the fifth month and it is the month of Av -- without a doubt. Just as we anticipated at first¹⁰¹ . . . afterward he mentioned¹⁰² . . . the prophet¹⁰³ . . . and in Shevat of the fortieth year and in¹⁰⁴ . . . Tishri. If Tishri was the New Year for the Exodus from Egypt there would be a need for Shevat¹⁰⁵ . . . the forty-first year and since the date of the previous month of Av is in the fortieth year and the Shevat after it (Av) is naturally in the fortieth year -- we thus deduce evidence that Tishri is not the New Year for the Exodus from Egypt.¹⁰⁶ This determination proves that it is not possible that Tishri is the New Year for the Exodus from Egypt. But another difficulty and at the same time explanation precludes that any of the five other months could be the New Year for the Exodus from Egypt -- indeed all six months: Elul, Tishri, Marchesvan, Kislev, Tevet, and Shevat of the fortieth year. Surely the demonstration is that from Elul until Shevat is one year, if one of these (months was the New Year for the Exodus from Egypt it would not be Av or Shevat at the same time and it still the fortieth year).¹⁰⁷

CHAPTER III

The body of R. Nissim's commentary can roughly be divided in five sections. The section reiterates the statement of the first Mishnah of Rosh Hashanah. "There are four New Years. One the first of Nisan is the New Year for Kings...." R. Nissim begins by rehearsing three things: 1) the knowledge from Bible texts that the first of Nisan is the New Year of the calendar, 2) that all the other months are counted from Nisan, and 3) that the oral tradition received by Moses knows of yet another important New Year that of Kings. This third point regarding the dating of the reign of kings from the first of Nisan is essential to an understanding of what may not be evident at first but is stated in Mishnah Shevi'it 10:5 about a practical matter -- the dating of the documents. What R. Nissim has explained so far is that the verses of the Bible tell us that the first of Nisan is the beginning of the New Year, concomitant with this is our knowledge garnered from the first Mishnah of Rosh Hashanah that Nisan is also the New Year of Kings. The New Year of Kings is the time from which we date documents, a necessary point, that gives us a fuller understanding of the purpose of both the Mishnah of Rosh Hashanah and consequently the Biblical verse.

R. Nissim then remarks that the first deduction that can be made at this point is about the Babylonian Talmud's approach to dating documents which is different from Kairouan's. In Kairouan time is calculated according to the era of creation, while in the land of Israel, the dating of documents was calculated according to the era of each particular king. Normally the dating of a document is established by checking two

documents. The one that contains the earliest date has first priority to be paid. That procedure of paying off the earliest claims is followed except if it becomes apparent that some kind of deceit has taken place. The court would look into this matter and establish the rightful claims, in order of the date of all valid documents.

R. Nissim then explains another way of dating documents of indebtedness that is a variation deducible from R. Hisda's teaching of the Mishnah from Shevi'it. R. Nissim quotes a passage from the Jerusalem Talmud to support his claim. While supporting the notion of antedated documents not being valid, the argument from the Jerusalem Talmud foreshadows yet another idea that R. Nissim points out immediately -- that in "that time" the calendar was kept not according to the era of creation, which for him is the month of Tishri. The expansion of the Babylonian Talmud's Nisan as the month for dating of calendars is explained to include Tishri as well, just as long as there is a beginning date.

R. Nissim at this point launches into the second section, the practical everyday implications of dealing with contracts. The first generalization should by now be clear, but to be sure R. Nissim briefly reviews basic court procedure that establishes the validity of two competing documents by checking the dates. The earlier document all things being equal is awarded payment first.

Next, R. Nissim gives examples of fraudulent actions involving two principals of a loan. Before setting out the major categories of examples, it is important to remember that before a court can discuss a

matter of fraud, it must be made aware of the evidence since to set aside a document is a serious matter. (Rashi and Tosaphot also discuss the status of documents dated later and naturally they disagree.) Rashi would set aside the questionable document. The Tosaphot, on the other hand believe that a scribe who writes documents everyday, would not be making a mistake on the dating of a document.

To explain the first example, of two, that R. Nissim cites we should understand that fraud could involve could involve a borrower who draws up a bill of indebtedness written by a scribe with a valid date, signed by witnesses but without the transaction ever having taken place. The borrower then proceeds to over extend his credit beyond the actual worth of his property, in properly executed loans. In order to borrow even more money this borrower then takes the dated and witnessed document to a certain creditor. The creditor is aware that the borrower cannot provide security so initially refuses to lend him the money. The borrower produces his document and suggests that since it is dated prior to his other loans the creditor would be the first party to collect. The fraud in this case involves several mistaken procedures: the first is the necessity for a person mortgaging his property to appear before the scribe and witnesses together with the lender, so that there the formal acceptance of the transaction is acknowledged legally. R. Nissim accounts for the irregular participation of the scribe as either error or conspiracy to defraud for he should have known better than to draw up a transaction without having all the parties present. Had this been allowed the borrowed would have retained a secret document with which he could exercise unfair advantage. This is a clear example of an antedated document.

The second example of fraud that R. Nissim presents is executed by the borrower borrowing some money in the proper way. He re-pays it and receives from the lender the document of indebtedness in return, as a receipt. It is customary for the lender to retain the agreement until it is paid. The borrower subsequently makes several transactions. He returns to the original lender asking to borrow from him again. The lender is hesitant since he knows there are several claims that proceed his. The borrower responds by producing their original agreement -- signed and repaid once -- he says to him to take it since it has an earlier date which is prior to subsequent transactions. Thus the original lender collects his money first.

If this matter becomes known to the courts, the documents are invalidated. In the first example, R. Nissim bases his argument on Baba Metziah 12b where the Rabbis try to protect people from the economic displacement that occurs when they are holders of first or second mortgages, that may not be valid because of unknown claims. In the second instance, R. Nissim quotes Baba Metziah 17a where the lesson forbids the use of a document for more than one transaction. This latter example is then applied to the case of antedated documents. There is one exception in which a document could be used twice, when the transaction happened on the same day.

R. Nissim then summarized his comments by repeating that antedated documents are not valid because they raise the possibility of the proper claimants losing their rights and money. R. Nissim adds a warning not to be too hasty in declaring a document invalid. In his pedagogic fashion, he adds a bibliographic note for more in depth discussions in

two other lessons, one in Tractates Baba Batra 161b and Baba Metzia.

R. Nissim concludes by adding that if he was going to deviate from the subject at hand, he would also explain that even though post dated documents are invalid since there is a spector of economic loss, here to, but since this loss is only to the holder of the document (the lender) he won't go into it except for a brief explanation into the matter. Unfortunately we do not have the rest of the manuscript to know what R. Nissim's examples were.

We should note that our passage, as explained by R. Nissim responds to latter Tosaphot demurials on Rashi's position. The Tosaphotist remarks that Rashi's (and R. Nissim's) explanations are superfluous for everyone knows that Nisan was established to aid courts and scribes to know when the New Year begins and to give proper public acknowledgement of the ordering of the months of the year. The Tosaphotist insists that a scribe who writes documents all the time knows the ordering of the months anyway. They further argue that the invalidation of a document is not to be done so facilly because it could happen that people could mistakenly date a document by a day or two. R. Nissim's explanations, as we have seen, emphasize that a conspiracy to defraud innocent parties whether by the borrower, the witnesses, the scribe, or even the lender, are a greater danger.

R. Nissim's commentary continues but much to our disappointment we are unable to understand what is being said because of the fragmentary nature of the manuscripts. We have attempted to translate one part of what seems to be the following page, Rosh Hashanah 2b. This fragment

has been assigned the designation, T-J 10 J 31⁴. Finally, Shraga Abramson has suggested that page 64 of Genizah Studies by Louis Ginzberg is also part of this commentary but here again it is impossible to decipher any meaning.

CHAPTER IV

We have discussed in chapter one some of the biographical material relating to R. Nissim, his teachers and contemporaries. Through a close examination of the poetic introduction to this commentary, we hope to add some understanding of the relationship among these men. Much of our information must be pieced together in jig-saw fashion though to a very great extent this work has been done for us by Dr. Shraga Abramson.

A very common form of the literature of the pre-printing age was the collection or anthology. Often material that may not have had a common subject matter, but that would be of interest to readers would be "packaged" together by removing "extraneous" words, leaving just the barest identifying features. It is not uncommon to find a text that begins "and as you asked" with an immediate response that only some times clearly reveals what the question was. If a copiest appreciated the work of a particular scholar he might add additional accolades or even make the argument stronger. The hand of the copiest can be seen in many manuscripts through such devices as the addition of the subject headings, blessings for the soul of the departed author and reformulation into the third person. One must read with a critical eye for what the actual words of an authority are as well as for what are additional fixtures.

Our commentary in manuscript, was preceded by such a collection of responses. The material that precedes the text of R. Nissim's commentary on Rosh Hashanah is a potporri of references dealing with the subject of

damages. A unifying theme in this list may be the numerical sets: "four kinds of damages; five individuals sitting on a bench and four kinds of coinage, etc." This suggests that our discussion may have come to the copiest's attention since it dealt with four New Years found in the first Mishnah of Rosh Hashanah. The headlines to our commentary: "a commentary to the first lesson of Rosh Hashanah", as expounded by R. Nissim the son of R. Jacob, "the grand mufti", may his holy memory be a blessing, according to what he received from his sublime and honored masters" are the sure tracks of a scribe. We may also add that in its complete form our text was more extensive probably covering at least the whole first chapter. The word halacha, translated here as "lesson" should thus be understood in the broad sense as belonging to a larger section of material, a section or subject, and in the designated sense of a practical matter, the dating of documents.

The language of most of our commentary is Arabic of the sort used by the Jews living in Muslim dominated countries during the Middle Ages. It is written in Hebrew characters with key terms in the "language of the Mishnah" i.e. Hebrew and Aramaic. The presence of several lines of poetic accolades in Hebrew referring to R. Hananel and R. Hushiel has led some to question the authenticity of this introduction because of the use of Arabic and Hebrew together. No one can conclusively decide which of the words of the introduction are authentic and which are not. A clue may be suggested by comparing our commentary when R. Nissim mentions his teacher, R. Hushiel with a blessing for long life to his Sefer Ha Mafte'ah following his death! "Our master, the holy rav, our rav Hushiel,

my teacher." This latter blessing is short and in keeping with R. Nissim's style of writing thorough but concise. By contrast in introduction to our commentary R. Hananel is crowned with an elaborate benediction exceeding that of his father. It may have been that since R. Hananel's work was better known to latter generations, this kind of profuse praise may have been added by the copiest. Even R. Zadok, a young contemporary who requested the explanation, is quite roundly praised and blessed. While warmth and friendliness are certainly not qualities that are peculiar to R. Nissim's writing and the correspondence of that time, the over statement seems not to have been a mark of R. Nissim's style. The fact that most of the blessings are paraphrases from the Bible is not unusual even though quoted in Hebrew and Aramaic for even Aramaic readers knew much of the Bible in its original language, Hebrew, or certainly parts in Targum. Conclusive arguments can not be brought to bear on the authenticity of our introduction, but some parts of it are certainly the work of a copiest, who might have been more familiar with the work of R. Hananel than R. Nissim.

As we know from other documents, several outstanding scholars from Palestine has studied in Kairouan as students of R. Hushiel so it is not unusual to find R. Nissim in correspondence with a resident of the land of Israel. We might infer that the men knew each other personally. by the friendly tone of R. Nissim's address to R. Zadok. R. Nissim's words can be heard second hand through the copiest's reformulation of אהבתיך בן אהבתיך "this dear and very beloved brother (friend)." Probably the original formulation used the possessive -- my dear and my beloved brother. This lends further support to the notion that the

introduction has been slightly reformulated from the first person to the third person, but that the words and thoughts are basically those of R. Nissim.

R. Nissim's style of quotation from the Jerusalem Talmud in support of his arguments is in a fashion that has so far been found to be a characteristic of his work. While his predecessors quote the Jerusalem Talmud as "Yerushalmi" or "Talmud Erets Yisrael", R. Nissim with few exceptions calls the Jerusalem Talmud "Gemarah de-B'nai Ma'arrav". It has proven successful to trace in many other commentators such as R. Issac of Fez and R. Yechiel of Italy the use of this device for citing the Jerusalem Talmud for they seem to be quoting an argument from R. Nissim. While this is certainly not a fool proof generalization, it is one worthy of remembering.

The study of the Geniza documents has made us pay particular attention to titles. Earlier sections of this paper have discussed several titles or prominent scholars in the hierarchy of the academies. We have said that the system was based on the scholarly status of an individual. Often in our documents we can see the development of a scholar by the titled recognition accorded him. This led some to exaggerate the eminence of earlier generations. Therefore, we find R. Nissim being called Gaon when the position did not rest outside of the three academies. In the reflection of latter generations R. Nissim was certainly of the stature of what Gaongenius came to mean. R. Nissim, his teachers R. Hananel and R. Hushiel, were each at their respective peak, the leading authorities of religious life, influencing not only Kairouan, but all of Jewish life in their times and after. The titles of these men in the introduction to our commentary

may be the actual words of R. Nissim or, more likely, reflective of the later day esteem and authority in which they were held. In R. Nissim's extensive works we find only this one direct reference to his older contemporary, R. Hananel. It is apparent that these men know of each others work for often they agree even if they do not directly refer to each other. There are no other direct references in our possession.

In R. Hananel's comment to this section of the Talmud we have essentially the same answer but in keeping with his general procedure, R. Hananel does not give us as detailed an explanation as R. Nissim. R. Hananel in his writing was concerned with illuminating the halacha, only the immediate practical implications. R. Hananel and R. Nissim both emphasize how a document is established as valid. Thus at one point R. Hananel says:

"...and therefore two documents of indebtedness relating to one person, one from one time and one from another time are confirmed by which one is earlier...if a person borrows money from another in Nisan the fifth year of King Yannai and antedates the time of the document by writing: In Nisan of the fourth year of King Yannai... if this(action) is confirmed by the court, that is that the witnesses antedated the documents of this indebtedness -- if it is not valid as we have been taught at the end of Mishnah Shevi-it..."

The language is similar in formulation to that of R. Nissim's: "... we need to know the two dates of the two documents of indebtedness in order to decide the law to pay the one who's claim is prior first..."

The language, terms, and atmosphere are almost identical. This should be compared to Rashi and the Tosaphot approach. While Rashi agrees essentially with the explanation of R. Hananel and R. Nissim, his world of discourse is very different. The terminology of his commentary reflects his pedagogic style that explains only the issues at hand so that

the essential material of Gemorra can be understood step by step. His commentary gives just enough background to allow a student to proceed to the next matter. R. Nissim by contrast attempts to explain each matter in depth. His commentary is the kind of "short course" on the dating of documents in the light of the Mishnah Shavi-it, and finally a practical guide on how to respond if and when the documents are found to be fraudulent.

5 העשירי הוא חדש מכת' וכתיר מתלחא פאנא
 נקלנא ען אלרסול מע דלך אנא איצא ראם אלסנה
 לתואריך אלמלך ולסא לם יגוז אן יכון מא נקלח
 אלינא מן דלך עאריא מן אלפאידה וצח לנא אנה
 לו לם יכן מפידא ולנא פי מערפתח מנפועא
 10 מן טריק אלסחכס ואלשרע לם יכן ונה פי נקלח
 אלינא. סאלנא ען כשף אלפאידה פי דלך וקלנא
 למלכים למאי הלכתא פשרח רב חיסדא וקאל
 אלפאידה פי דלך היא מערפת תואריך אלשטרות
 ואסתדל בקול אלמשנה שטרי חוב המוקדמין פסולין
 15 ותמאחרין כשרין. ובגמרא דבני מערבא
 אמרינן בין כמאן דמ'איך דאמ' מניסן מנינן ובין
 [ד' ע"ב] כמאן דאמ' מתשרי מנינן מה ביניהון שטרות
 היוצאין ביניהון לזה מלוח כאייר וכתב בה
 שנה שניה למלכות מכר מכירה במרחשון
 וכתב בה שנה שניה למלכות מאן דאמר
 5 מניסן מנינן מלוח קדמה מאן דאמ' מתשרי
 מנינן מכירה קדמה. פחצל לנא מן תפסירה
 אן תואריך אלשטרות פי דלך אלזמאן לם תכן
 כמה נרסם נחן אלזאן ליצירת עולם ואנסא כאנת

כמו שאתה אומר בחדש התשיעי הוא חדש כסלו בחדש העשירי הוא חדש מכת' והרבה כיוצא בהם, הנה קבלה בדינו מהשליח (משה רבינו) יחד עם זה שהוא גם כן ראש השנה לחשבון המלכים. ומכיון שלא יתכן שמה שקבלנו במסורת יהיה בלי שום תועלת, ומכיון שכרור לנו שלולא היה מועיל ויש לנו בדיעתו תועלת מצד הרין וההלכה לא היה צורך במסירתו לנו, בקשנו לגלות את התועלת בזה, ואמרנו למלכים למאי הלכתא וכאד רב חסדא ואמר התועלת שתגיע לנו בזה היא ידיעת זמני השטרות. והביא ראיה מדברי המשנה שטרי חוב המוקדמין פסולין ותמאחרין כשרין, ובגמרא דבני מערבא אמרינן בין כמאן דאמר מניסן מנינן בין [ד' ע"ב] כמאן דאמר מתשרי מנינן מאי ביניהון שטרות היוצאין ביניהון לזה מלוח כאייר וכתב בה שנה שניה למלכות מכר מכירה במרחשון וכתב בה שנה שניה למלכות מאן דאמר מניסן מנינן מלוח קדמה מאן דאמ' מתשרי מנינן מכירה קדמה. ולמדנו מתוך פירושו שזמני השטרות באותה העת לא היו כמו שאנחנו כותבים עתה ליצירת עולם אלא היו מחשבים לשנות המלך המולך באותו הזמן וכותבים בשנת כך וכך למלך פל'. ואנחנו וקוקים לדיעת

תפסירי אלהלכה אלאולח
מן גמ' דראש שנה פסרהא
רבנו נסים ביר' יעקב
הרב הראש¹⁰ דקרבניו

מספרות הגאונים

122

חסבי מא נקל ען אלמארה אלאפאל אלאולח עמודי
13 עולם ויסודיו מצוקי ארץ אשר שח צור
תכל מרנו ורבנו חושיאל הרב הגדול המובהק
יגן צורו בעדו ויאריך ימיו ושנותיו ומרנו ורבנו
[ג' ע"ב] חננאל המודי הרב המובהק מופת הדור אשר
מסנו תורה יוצאה לכל ישראל²⁵ בעל מלאכתו
ישלם שכרו² וכשמים החדשים יעמיד
שמו וזכרו³ ויבחקי אורו ואל יכבה נרו ואל
יתנחו כנפש צרו⁴ ולא ישן שומרו⁵ ובסתר כנפיו
יסתירו⁶ ומצרו יהיה עזרו⁷ ועליו יציץ נורו.
סאלה פי תפסירה¹⁰ מ' ור' צדוק האח
היקר החביב לו עד לאחתיו השוכן בארץ ישראל
ישמרהו צורו ויתמכהו בימין צדקו וישלים
10 חקו ומיין הרקח ישקו¹² ומחלב תורתו יניקו.
ולנצח אל ישבקו ובספר חיים יחוקקו. וכל
אויב לו ימחקו. ולא ירפנו עד בלעו דוקו¹³. והוא
מיד שאל יפרקו¹⁴. ובתורה ובמצות יחזקו. ויהיה
מנת חלקו. בן מר' יחיה ג' ע. [ג' ע' 130]
15 ארכע ראשי שנים הן באחד בניסן ראש שנה
למלכים וכול' קאל רבותינו ז' לב' אנה ועלי אן
אלנצין דלתנא עלי אן ניסן הו אלאול דשהור אלמנת
[ד' ע"א] בקול ראשון הוא לכם לחדשי השנה¹⁵ וקאל
בחדש הראשון הוא חדש ניסן¹⁶ ואן אקראד
אלשהור כלתא אלמצוצת¹⁷ אליה מנסוכה כמא
תקול בחדש תחשיעי הוא חדש כמלו בחדש

[ג' ע"ב] אמרו רבותינו זכרם לברכה אע"פ שתמקראות מורים לנו שנים הוא
הראשון לחדשי השנה [ד' ע"א], כמו שנאמר ראשון הוא לכם לחדש השנה, ונאמר
בחדש הראשון הוא חדש ניסן, ומנין החדשים כלם הנזכרים בתורה מובכים אליו

1. לפי מה שקבל מהאדונים הנכבדים והנעלים וכו'.
2. גישין.
3. אבות פ"ב מ"ג.
4. ישעיה ס"ג כ"ב.
5. תהלים כ"ג י"ב.
6. שם קריא ג'.
7. שם י"ג ח'.
8. דברים ל"ג ב'.
9. תהלים קל"ח י"ח.
10. שאלחו.
11. מנחות י"ח א'.
12. שיר השירים
13. איוב ז' י"א.
14. חושע י"ג י"ד: מיד שאול אפרם, ח"י: פרקתיון (ל).
15. שמות י"ב ב'.
16. אסתר ג' ז'.
17. נראה שצ"ל: אלמצוצת.

מורכב לסני אלמלך אלמחלי פי דלך אלזמאן פיכתבו
 10 בשנת כך וכך למלך פלי ואנא מחתאגין אלי
 מערפה אלחואריך פי אלשטארין לנקצי כתופיה
 מן סבך דינה מקדמא עלי מא פי אצלנא כל הקורם
 בשטר זכה פמתי וקעת חילה בין אלקארין
 ואלמקרין פי אכטאל חק מן תקדם ותקרים מן
 15 לא יגב לה אלתקרים ועלמנא דלך חכמנא
 באכטאל אלשטר ואפטארה וקדמנא מן יסתחק
 אלתקרים מן אצל אלחכם. ואלחילה פי דלך
 תגרי עלי וגוה כתיבה לכני אדכר מן דלך
 [ח' ע"א] וגהין תכן נמודגא פי הרא אלמעני ויסתדל מנהא
 על סואהא. אל אול הו אן יכן ראובן ענדה
 דאר תסאוי ארבע מאיה דינארא פמצי אלי אלכאחב
 פי אדר בשנה הראשונה למלך פלי כתב עלי
 5 נפסה כתאבא לשמעון במאיתין דינארא דינא
 ואשהד עלי נפסה שהודא בדלך בגיר קנין וכאן
 אלכאחב פי דלך סאהיא או מתעדיא פלמא
 חצלה כתאמה אלשהוד פי אלשטר תרכה
 ענדה. תם מצי פי ניסן והי שנה שנייה
 10 לדאן אלמלך תסלף מן לוי מאיתין דינארא וכתב לה
 בהא שהוד² שטר ופי אייר אלדי יליה תסלף מן
 יהודה ק"ק דינארא וכתב לה בה שטר ואתי

חומן בשני השטרות כרי שנפסוק הלכה לפרוע למי שקדם חובו תחלה לפי הכלל
 שבידנו כל הקודם בשטר זכה. ואם נפלה קנוניא בין הלוח והמלוה לבטל זכות
 מי שקדם ולהקדים מי שאין ראוי להקדימו ונודע לנו דבר זה אנחנו פוסקים לבטל
 את השטר ולפסלו ומקדימים את הראוי להקדימו לפי עיקר הדין. והקנוניא בזה
 תהיה באופנים רבים אבל אזכיר בזה [ח' ע"א] שני אופנים שישמשו דוגמא בענין
 זה ויש להביא ראיה מהם על זולתם. הראשון הוא: לראובן יש בית שזה ארבע
 מאות דינר והלך אל הסופר באדר בשנה הראשונה למלך פלוגי וכתב על עצמו
 שטר חוב לשמעון במאתים דינר והעיד על עצמו עדים בלי קנין והיה הסופר בזה
 שוגג או מזיד, ואחרי שחתמו העדים בשטר הניחו אצלו. אחר כך הלך בניסן,
 והיא שנה שניה לאותו המלך, ולזה מלוי מאתים דינר וכתב לו עליהם שטר
 ובאייר שלאחריו לוח מיהודה מאתים דינר וכתב לו עליהם שטר, וכתמוז בא אל

1. כיב קליח א'. 2. נקוד לסימן מחיקה.

פי תמוז אלי שמעון יתסלף מנה ק"ק דינארא
 פקאל' לה שמעון ארא כאן גמיע מא תמלכת אנמא
 15 יסאוי ה מאיה דינארא ועליך באיוואהא שטרין
 ללוי ויהודה והמא פי אלמסתיפא אסבק מני מן
 אסתופי אנא מאלי פאכרג לה אלשטר אלוי כאן
 קד כתבה פי אדר וקאל' לה קד כתבת לך
 [ה' ע"ב] עלי נפסי שטר פי אדר מן אלסנה אלמאציה תכן כה
 מקדמא פי אלמסתיפא עלי לוי ויהודה פמתי מחר
 ללחאכס אן אלממר גרי הכרא אפסד אלשטר
 ולם יקצי כה לה [ב] אלמסתיפא שי. וחכס ללוי ויהודה
 5 באלמסתיפא רונה. וקולי אשהד שהודא בגיר קנין
 וכאן אלכאחב פי דלך סאהיא או מתעריא לאנה אן
 אקני מן נפסה נשתעבר משעת קנין. ואלכאחב
 לא יגוז לה ללאכתרי יכתב שטר ללוי בשאין
 מלוח עמו אלא בשטרי הקנאה דשעבר נפשיה
 10 פלמא כאן הדא בלא קנין כאן יגב אלא יכתב אלשטר
 אלא ער שיהא מלוח עמו ואן כתב בגיר קצר ומערפת
 כאן סאהיא ואן תעמר דלך כאן מתעריא פלהרת
 אלוגה אוטית הנאך בקולי פיהפט. ואלוגה
 אלבי מן אלוגהין אלדי דכרנא הו אן יכן ראובן קד
 15 קד' תסלף מן שמעון ק"ק דינארא פי ניסן והי אול

שמעון ללות ממנו מאתים דינר, ואמר לו שמעון הרי כל רכושך אינו שוה אלא
 ארבע מאות דינר, ויש עליך כנגדם שני שמורות ללוי ויהודה והם קודמין לפרעון
 ממני, ממה אנכה אני את כספי, והוציא לו את השטר שכבר כתב לו באדר
 ואמר לו כבר כתבתי לך [ה' ע"ב] על עצמי שטר באדר מן השנה שעברה תחיה
 בו קורם לפרעון על לוי ויהודה וכשיתגלה לדיון שהענין קרה כך יפסול את השטר
 וא' ירון לו על פיו להפרע כלום. ויפסוק ללוי ויהודה להפרע ולא לו (לשמעון).
 ואמרי לפני זה: "והעיד עדים בלי קנין והיה הסופר כזה שוגג או מזיד", מפני
 שאם הקנה על נפשו נשתעבר משעת קנין והסופר אסור לו לכתחלה לכתוב שטר
 ללוי בשאין מלוח עמו אלא בשטרי הקנאה דשעבר נפשיה, ומכיון שהיה זה בלא
 קנין לא היה ראוי לו לכתוב את השטר אלא ער שיהא המלוח עמו, ואם כתב
 בלי כונה וידעיה נקרא שוגג ואם עשה בכונה נקרא מזיד. ולאופנים אלה רמותי
 שם בדברי, וראוי לשמורם. והאופן השני משני האופנים שהזכרנו הוא, שקדם
 ראובן ולוי משמעון מאתים דינרים בניסן שהוא תחלת השנה התשיעית למלך

אלסנה אלתאסעה לפלאן אלמלך פלמא כאן פי תשרי
הלך אלסנה אלתאסיעהי אקצאה אלקיק דינאר
ואכר אלשטר מנה חרכה ענדה. ותסלף פי
[י ע"א] מרחשון מן לוי ק"ק ופי כסלו מן יהודה ק"ק פלמא
ואפא ניסן אוי אלסנה אלעאשרה ללמלך טצי
לשמעון יסאלה אן יסלפה ק"ק דינארא פכשי
לשמעון אן יסלפה שיא מן גהה מא תקדמה
3 מן וגוב חק לוי ויהודה פקאל לה ראובן הורא בירי
אלשטר אלדי כנת קר כתבתה עלי פי מא
תסלפתה מנך פי ניסן אלמאצי פכדה ואסלפני בח
אלמאל פתכן טקדמא פי אלקבן ואלאימחיפא עלי לוי
ויהודה פארא אנכשף דלך ללחאכמ איצא אפסדה
10 ופי אלולה אלואל קאל אלחכמ זיל חישין שמא כתב
ללות בניסן ולא לזה עד תשרי ואחי למטרף לקוחות
שלא כדן. ופי אלולה אלב קאלו שטר שלות בו
ופרעו אינו חוזר ולזה בו שכבר נמחל שעבודו
פקלנא עלי מריק אלעעתראן מאי איריא שכבר
15 נמחל שעבודו ותיפוק לי דהוה ליה מוקדם
ותנן שטרי חוב המוקדמין ואחי אלנפצאל
אלא לאו ביומיה. פהרא הו תפסיר שטרי חוב
[י ע"ב] המוקדמין ואנמא כאנו פסולין לאן אלקצר פיהם
אצראר צאחב אלחק ותקדים מן לא יגזו

פלוגי וכתשרי באותה השנה פרע לו את מאתים הדינרים ולקח את השטר ממנו.
ותניחו אצלו ולזה [י ע"א] במרחשון מלוי ק"ק ובכסלו מיהודה ק"ק וכשהגיע ניסן
תהלת השנה העשירית למלך הלך לשמעון לבקש ממנו להלוותו ק"ק דינר וחשש
שמעון להלוותו דבר מפני שקדמה לו חלות זכות לוי ויהודה, ואמר לו ראובן הנח
בירי השטר שכבר כתבת עלי כשלויותי ממך בניסן שעבר קח אותו וחלוני כנגדו
כסף ותהיה קודם בנביה ובפרעון ללוי ויהודה. ואם יתכרר הדבר הזה לדיון צריך
גיכ לפסלו. ועל האופן האי אמרו חכמים ז"ל חישין שמא כתב ללות בניסן ולא
לזה עד תשרי ואחי למיטרף לקוחות שלא כדן. ועל האופן הב' אמרו שטר שלות
בו ופרעו אינו חוזר ולזה בו שכבר נמחל שעבודו. ותיפוק ליה דהוה ליה מוקדם
ותנן שטרי חוב המוקדמין פסולין. (ועל זה בא התירוצ' אלא לאו ביומיה) והו
פירוש שטרי חוב [י ע"ב] המוקדמין. ולא נפסלו אלא מפני שהכונה בהם לחזיק
לבעל הובות ולחקרים את מי שאין להקדימו, ואבור מטובו של מי שראוי להקדימו,

1. נקור לטימן סחוקה. 2. בים יב ב'. 3. שם יז א'.

תקדימה. וחצייע מאל מן יגב תקדימה פלדלך
 חכם באבמאל אלכחאב וכל מא גרי פי אלשטרין
 5 הדא אלטגרי כאן פסול ולא גבונן בחי ממשעברי
 כלל וכסה טיריוו אית בגמ' דשנים אוחזין וגמ'
 דגמ פשוט² פי הדא אלמעני ולולא אנה יכרגני
 ען תפסיר אלהלכה אלדי אנא פיהא לתקצית
 שרחהא. ואמא שטרי חוב המאוחרין אלדי הם
 10 כשירין פמא יקע בהם תצייע טאל אלגיר ולא אצראר
 באחד מן אלטראינין כחה. לעמרי אנה קד יצר
 צאחב אלמאל נפסה אחיאנא אן כאן קד תקדמה
 סואה ולכן למא כאן אלחפריט ואלתצייע קד אתי מן
 גחתה למ נכאלי גחן. ושרח דלך הוא אן יכן
 15 ראובן תסלף מן שמעון ק' דיני פי ניסן ולם יטאלבה
 פי כתבה אלכחאב אלי חשרי וכאן קד תסלף מן

ולכן יפסוק לבטל את השטר וכל מה שיקרה כשטרות חזות יהיה פסול,
 ולא גבינן ביה ממשעברי כלל, וכסה טיריוו אית בגמרא דשנים אוחזין וגמ' דגמ
 פשוט בענין זה ולולא שהייתי יוצא ע"י זה מפירוש ההלכה שאני עומד בה הייתי
 מפרש את הענין עד הסוף. ואמנם שטרי חוב המאוחרין שהם כשרים כי אין בהם
 חסרון כים לאחרים ואין בהם שום נזק לאחר מבעלי החוב, ובחיי שזה מוזק
 לפעמים לבעל חספס אם כבר קדם לו זולתו, אבל מכיון שהנזק והתפסור כאים
 מצד עצמו לא איכפת לנו. וכיארור ענין זה הוא שראובן לוח משמעון ק' דינר
 בגיטן ולא חבט סמנו לכתוב לו שטר עד חשרי וקדם ולוח מלוי]...

המשך של פירוש רב נסים לראש השנה

[ע"א] אלקצד פי הדא א.. א אכבארנא בניאן אלבית

הג... לאן ה[אולי] תאריכין אלואחד מנהמא

ליציאת מצר[ים] [וא] לת[אנ]י למלכות שלמה [ול]ם

נכתמי פי מא קצ[ד] אכבארנא בה באלאול

5 ולם יגו אנ... יתכרר אר... פי אלנץ לגיר פאידה

כאנת אל[פאיד]ה פי דלץ לו קים תאריך מלך

שלמה אלתאני לתאריך יציאת מצרים אלמנצוץ

אולא ונעלם אנ אלתאריכין גמיעא מן שחר

ואחד פלמא כאן אל תאריך ליציאת מצרים

10 מניסן חכם למלכות שלמה מן [ני]סן ולהדה

אלעלה גמעהמא אלנץ לתסאויחמא פי אלתאריך

פקלנא על[י] טריק אלאעתרא[ץ] ומא אלדליל עלי אנ

אלתאריך ליציאת מצרים מן [י]סן חתי נחכם

לתואריך אלמלוך מתלה ולעלה מן תשרי יחסב

15 פאתי אלאן בנצוץ תמנע אנ כאן אלתאריך ליציאת

מצרים מן תשרי וחי אנה קד דכר ופאה

[ע"ב] אחרן בחדש חמישי וחו אב לא שך יסבב

מא קדמנאה פי אלצדר ואימיר... ל....

תם דכר תלאוה אלנבי..... ואל

פי שבט סנה אלארבעין ופי.... תשרי פלו

- 5 כאן תשרי ראש שנה ליציאת מצרים לוגב
אן יכון שבט אלדי פיה אלתורה סנה ואחד וארבעין
פלמא כאן תאריך אב אלמקדם סנה אלארבעין
ושבט אלדי בעזיה סנה אלארבעין דל עלי אן תשרי
ליס הו ראש שנה ליציאת מצרים. והדא
10 אלנציו ועלי אנהא דלתנא עלי אלמנע באן יכן
תשרי ראש שנה ליציאת מצרים אלדי אתי
אלאעתרף.... ה פמנעת איצא ה' שהור אכר
אן יכן ואחד מנ[המ]א ראש שנה ליציאת מצרים
צאר אלגמלה ו' שהור ותי אלול תשרי ומרחשון
15 וכסליו וטבת ושבט לאנה כמא אסמי אב שנת
הארבעים ושבט שנת הארבעים כאן דלילא עלי
אן מן אלול אלי שבט סנה ואחדה אד לו כאן ואחד
(תרגום)

הכוונה ב[סיפור] הזה [ש]סיפרו לנו בנין הבית / (והזכירו בו) שני תאריכים האחד מהם / ליציאת מצרים והשני למלכות שלמה ולא / נסתפק במה שהתכוון בספרו בו (בתאריך) בראשון / ולא יתכן שיהא [דבר] כפול בכתובים ללא תועלת¹ / והתועלת בזה ל.... תאריך מלך / שלמה השני לתאריך יציאת מצרים הכתוב / ראשונה, וגדע שני התאריכים גם יחד מחודש / אחד. ומכיון שהתאריך ליציאת מצרים / הוא מניסן נדע למלכות שלמה (שהיא) מן ניסן ומשום סיבה זאת / צירף הכתוב את שניהם יחד משום שהם שווים בתאריך / ואמרנו על דרך הקושיא ומה הראיה / שהמנין ליציאת מצרים מניסן כדי שנדון / למנין המלכים כיוצא בו ושמה הוא מן תשרי? / והביא עתה מקראות שימנעו שמנין ליציאת / מצרים מן תשרי והוא ש(הכתוב) כבר הזכיר מיתת / (ע"ב) אהרן בחדש חמישי, והוא (חדש) אב ללא ספק / מה שהקדמנו בהתחלה... / אחר כך הזכיר... הנביא... / בשבט שנת הארבעים וב.... תשרי ואילו / היה תשרי ראש שנה ליציאת מצרים—צריך / ה[יה] שיהא שבט אשר בו... שנת ארבעים ואחד / ומאחר שתאריך אב הקודם הוא שנת ארבעים / ושבט אשר אחריו שנת ארבעים—ראיה (מזה) שתשרי / אין הוא ראש שנה ליציאת מצרים. והקביעה / הזאת, שמוכיחה לנו שלא יתכן שיהא / תשרי ראש שנה ליציאת מצרים בא / הקושי [והתירוץ] מנע שיהא אף (אחד) מן חמשה חדשים אחרים / ראש שנה ליציאת מצרים / — הרי כולם ששה חדשים והם אלול תשרי ומרחשון / וכסלו וטבת ושבט, משום שכמו שקרא (לחדש) אב שנת הארבעים וחדש שבט שנת הארבעים הרי ראיה / שמחדש אלול עד שבט שנה אחת, שאילו היה אחד (מן החדשים האלו) ראש שנה ליציאת מצרים לא היו / אב ושבט בשעה אחת והיא שנת הארבעים).

1. וכן מצאנו לר"ב בהקדמתו לספר המסכת.

(Fragment 104; leaf 1, recto.)

קג
 דאמרינן ויציאת מצרים גופה מנלן . . .
 קד סנהדרין¹
 הא דתניא מעשיה ברבן גמ' שהיה יושב על גבי
 קה שבועות²
 תנן הפוגמת כתובתה לא תפרע אלא בשבועה
 קו נדה³
 הא דאמ' ועירי מעת לעת שבנדה עושה
 קז בכורות⁴
 דתנו רבנן מנין שאם קרא לחשיעי עשר⁵
 קח בכורות⁶
 הא דתנן הקרח פסול ואמר רבא
 קט מיצעה
 ראובן אמ' לאשתו אל תדברי עם פלונית
 קי זבחים⁷
 כל הזבחים שקיבל דמן
 קיא מיצעה
 ראובן הלוח לשמעון אלף וחמש מאות זוזים⁷
 קיב ביצה (?)
 טבח שנשע⁸ שלא יאכל בשר כל

¹ *Sanhedrin*, 11 b.² *Niddah*, 5 b.³ *Ibid.*, 43 b.⁴ *Müller*, ג"מ, 13.⁵ *Shevuot*, VII, 7.⁶ *Bekorot*, 59 a.⁷ *Zebahim*, II, 1.

FOOTNOTES

1. S. D. Goitein, A Mediterranean Society. (Los Angeles: University of California Press, 1967), I, ppp-29. B.M. Lewin, Otzar Ha-Gaonim (Jerusalem: Hebrew University, 1923), V. III, pp 9-12. J. Mann, "The Response of the Babylonian Gaonim" Jewish Quarterly Review N.S. XI (1921), p.453f.
2. An obvious case in point within a Jewish context is Abraham Ibn Daud in his Sefer Ha-Qubbalah. Gerson Cohen, trans. The Book of Tradition, (Philadelphia: Jewish Publication Society, 1967).
3. S. D. Goitein, A Mediterranean Society. (Los Angeles: University of California Press, 1967 and 1971), I and II.
4. H. A. (J.W.) Hirschberg, A History of the Jews in North Africa (Leiden: Brill, 1975), I, p.251.
5. S. D. Goitein, Studies in Islamic History and Institutions (Leiden: Brill, 1966), p. 251. Hirschberg, p. 198.
6. Goitein, Society, I, p. 44. Hirschberg, p.37. Shraga Abramson, Inyanot Be-Sifrut Ha-Goanim (Jerusalem: Mossad Rav Kook, 1974), p.268.
7. Samuel Joseph Poznanski, "Anshe Kairouan", in Harkarvy Festschrift, ed. David Ginsberg and Isaac D. Markon (1919; rpt. Jerusalem: 1968), p. 175. Goitein, Society I, p. 277. The Jewish Encyclopedia, VII, p. 414.

8. Hirschberg, Jews p. 101. Encyclopedia Judaica, VI, p. 697.
The Jewish Encyclopedia, VII, p. 914. H.Z. Hirschberg, Eretz-Israel (Tel Aviv: Divir, 1954), V, p. 214.
9. Poznanski, p. 75. Hirschberg, Jews, p. 101.
10. Hirschberg, p. 103.
11. Hirschberg, p. 103.
12. Goitein, Society, I, p. 32.
13. Hirschberg, Jews, p. 254.
14. Goitein, Ibid, Society, Vol. I, p. 31. Hirschberg, Ibid., Jews, p. 198.
15. Goitein, Society, I, p. 59.
16. Early October c. 1010.
17. S. D. Goitein, Letters of Medieval Jewish Traders, pp. 73-77. S. D. Goitein, "The Tustari Family", Jewish Quarterly Review, Vol. 45, 1954, p. 36-38. Goitein, Ibid., Society, Vol. II, pp. 7, 27.
18. Goitein, Letters, p. 77.
19. Goitein, Society, Vol. II, p. 202.
20. Hirschberg, Jews, p. 271.
21. Goitein, op. cit. Letters, p. 77. R. Nissim took refuge in Susa when Kairouan was destroyed, during the last years of his life.
22. Hirschberg, Jews, p. 301.
23. Hirschberg, Jews, p. 324. Poznanski, op. cit. p. 176.
24. Goitein, Society, Vol. II, p. 205.
25. Hirschberg, Jews, p. 301. Goitein, Society, Vol. I, p. 314 n.3.
26. Poznanski, "Anshe Kairouan", p. 219.
27. Hirschberg, Jews, p. 301.
28. Hirschberg, Jews, p. 300.
29. Hirschberg, Jews, p. 300-304.

30. King Ptolomy is censured here for his having ordered seventy individual scholars to independently translate the Bible in Greek. This 'aggada is just what is meant.
31. Hirschberg, Jews, p. 301. Goitein, Society, Vol. II, p. 13.
32. Hirschberg, Ibid., Jews, p. 304.
33. Goitein, op. cit., Society, Vol. II, p. 4.
34. Goitein, Ibid., Society, Vol. I, p. 65.
35. Goitein, Ibid., Society, Vol. II, p. 21.
36. Goitein, op. cit., Society, Vol. II, p. 6.
37. Mann, Texts, p. 120-121.
38. Gerson Cohen, "The Reconstruction of Gaonic History", Introduction to Jacob Mann's Text and Studies in Texts and Studies 1972 reprint, p. XLII.
39. Goitein, op. cit., Society, Vol. II, p. 25.
40. Gerson D. Cohen, "The Reconstruction of Gaonic History", in Texts and Studies, (1931; rpt. New York: KTAV Publishing House, 1972), I, p.5.
41. Mann, Texts, p. 120-121.
42. Encyclopedia Judaica, VIII, p. 1251.
43. Goitein, Society, II, p. 563.
44. Salo W. Baron, A Social and Religious History of the Jews, VI, p. 33. Abramson, R. Nissim, p. 3. This quote is from the introduction to Sepher Hafte'ah.
45. Hirschberg, Jews, p. 188.
46. Abramson, R. Nissim, p. XXLL.
47. Abramson, p. 13 and 34.

Chapter II

48. S. A. Poznanski, Anshe Kairouan, pp. 30-31, suggests that the title עֲקָרָא is a shortened form of עֲקָרָא דְּרַבִּי. Poznanski suggests further that all abbreviations of עֲקָרָא probably should be understood as עֲקָרָא דְּרַבִּי. B.M. Lewin, Otzar Ha-Goanim, Volume V, p. 9, understands this to be an honorific title. Lewin supports his example with other instances on the same page, including R. Hushiel, R. Shmirya b. Elhanan, and R. Nissim's father, R. Yakov b. R. Nissim. Shragha Abramson, R. Nissim Gaon, p. 363f. agrees with the idea first presented by S. Y. Rapaport that stands for עֲקָרָא דְּרַבִּי and not עֲקָרָא דְּרַבִּי which has led many astray. The significance of this title suggests that R. Nissim held a rather important and esteemed position.

49. The language of the introduction is reminiscent of I Samuel 2:8 "For the pillar of the earth are the Lord's and He hath set the world upon them." This footnote is not mentioned in our text as presented by either B.M. Lewin, *ibid.*, p.9, or Simch Assaf, Ma-Sifrut Ha-Gaonim, p. 122. (The Jewish Publication Society translation is used throughout this paper.)

50. Gittin 44a. "...the rule is issued to all Israel..." This quote signifies the high esteem that R. Hananel was held in. Abramson on page 24 of his introduction to R. Nissim Gaon mentions the fact that Hananel receives more praise than his father. This is puzzling but may point to a copyist's addition according to Abramson. There are clear indications that our text has been copied and enlarged to some degree. The most elementary indication is the addition of abbreviations such as §.§ -- "may his holy memory be blessed." At other times the scribal accretions are more difficult to track. Abramson claims that the heading of this text "a commentary on the first discussion of the Gemmorah of ... may his memory be blessed," are not R. Nissim's words. Where exactly R. Nissim's words end is not clear. Apparently R. Hushiel is still alive since he is wished a long life. Abramson speculates that only the acknowledgement of R. Nissim's debt to his teacher is original to the introduction and the rest is added by someone else.

51. Pirke Avot 2:14 Hanoch Albeck, Shisha Sidra Mishneh, Mezikin, p. 362. The pagination varies for each edition of the Mishnah. This saying of R. Eliezer refers to God's faithfulness to his workers - man.

52. Isaiah 66:22. "For as the new heavens and the new earth, which I will make shall remain before me, saith the Lord, so shall your seed and your name remain." The exact wording in this introduction to the commentary is different but still reminiscent of the verse. The intent is to wish R. Hananel a blessing of continued progeny in a physical and spiritual sense.

53. Psalms 27:12. Deliver me out over unto the will of mine adversaries
54. Ibid., 121:4. Behold, He that keepeth Israel doth neither slumber nor sleep. The verse is not quoted exactly in our text as it appears but the reference is clearly to this passage.
55. Ibid., 17:8. "Hide me in the shadow of Thy wing." This verse is also not quoted in our text but alluded to.
56. Deuteronomy 33:7. "And Thou shalt be a help against his adversaries." The last part of this verse is quoted in inverse order, it should be . Again the words are slightly different. This passage is incorrectly noted by Assaf as verse two rather than seven.
57. Psalms 132:18. "But upon himself shall his crown shine." Both the Lewin and Assaf texts incorrectly assign Psalms 138 as the one that is quoted.
58. Menachot 18a. The phrase *יִתְּנֵנוּ לְךָ יְיָ אֱלֹהֵינוּ* is found in several forms. There are two explanations of its meaning that are offered. One suggests, following Rashi that until this one moment they agreed on all things. They are politely disagreeing with each other. The second explanation for this phrase, the most likely one, is that it is used to refer to a dear student.
59. Song of Songs 8:2. "I would cause thee to drink spiced wine." As in many passages above the verse is quoted in approximate fashion.
60. Job 7:19. "Nor let me alone till I swallow down my spittle." The change in the quote seems to suggest that R. Zadok has enemies who vex him. R. Nissim or another hand has taken time to curse him. Admittedly it is difficult to know if indeed R. Zadok b. R. Yihya is beset by opposition.
61. Hosea 13:14. Lewin, op. cit., p. 9 and Assaf, op. cit., p. 124. This verse is quoted partly in the Aramaic Targum Yonatan and partly in Hebrew. This may suggest that certain parts of the Torah were better known in Aramaic Targum.
62. Zadok's father is Yihya. There is no other mention of them in any of the literature with the possible exception of a reference to *יִתְּנֵנוּ לְךָ יְיָ אֱלֹהֵינוּ* by Jacob Mann, The Jews in Egypt and In Palestine Under the Falamid Caliphs, Volume II, p. 97. This would be a younger contemporary of R. Nissim. Mann dates one document from 1026 and the other from 1029. R. Zadok b. R. Yihya is identified as a Palestinian communal leader by Mann.
63. This is the caption that begins the discussion in the Mishnah of Rosh Hashanah 2b.
64. Exodus 12:2.

65. Esther 3:71
66. The "divine Messenger" is Moses. He is the transmitter of the traditional knowledge of Nisan being the New Year of kings, a matter that is implicit in our knowledge of the verses from Exodus 12:2 and Esther 3:7. R. Nissim has completed his first thought at this point. The first four English sentences should be understood as one statement supported by scriptural texts.
67. In this question we hear the echo of R. Zadok b. R. Yihya words. It seems R. Nissim is quoting the actual words from the inquiry.
68. Shevi-it 10:5. R. Nissim is quoting from the Gemorah.
69. "The Gemorah discussion of the Westerners" refers to the Palestinian Talmud or Talmud Yarushalmi. The quote continues until the words: "He who calculates from Tishri would say that this transaction is an antedated sale."
70. The phrase הוא הדין שם refers to a case in which the privileges and detrimants of inheritance are discussed in Tractate Bava Batra 138a as pointed out by Simcha Assaf. The specific reference is to the order of responsibility that the heirs have in repaying any claims made against the estate of the deceased. The Gemorah, B. B. 138a, discussion indicates that the first person mentioned by the benefactor is not necessarily the one that was intended as the primary heir. Only if the dying benefactor had indicated a hierarchy of heirs by saying: "after so and so give so much to so and so and after him so much to so and so" could the intention of the benefactor be correctly executed. Nissim used this principle of הוא הדין שם to explain the necessity of the two dates on two separate documents in establishing the principle that the person with the earliest date should be allowed to collect what is owed him first. Nissim apparently adopts the opinion that the principle of prior claims is established for the recipient in this case the person to whom the money is owed by virtue of the earliest date on his contract. In the case mentioned in the Gemorah there is not necessarily a document but at a minimum an indication of priority. R. Nissim has apparently adopted this principle as has the Gemorah, Rashi, Maimonides, et. al. to refer to actual documents.
71. If the court finds that an attempt to defraud (הוא הדין שם) is evident then they tear up the fraudulent document and invalidate the dealing. 66 §3 כן ידוע
72. The use of a scarf to symbolize actual consumption of a transaction was common. R. Nissim is probably referring to other conditions of transfer that were unfulfilled that would completely invalidate this transaction. The most glaring of these is the fact that Shimon completed no actual transfer of this before the witnesses. It is forbidden that witnesses attest to some matter without it actually having transpired before them.

73. In a legal transaction the person who borrowed the money would not retain the document. Normally it would be held by the borrower or sometimes by the scribe acting as an agent of the court. We must assume that the document is left with Reuven otherwise, we would not be able to understand the rest of the example. The word *l* might be mistakenly be taken to refer to the scribe.
74. Adar is the month before Nisan. The assumption of a leap year in which there would be two Adars is un-important for our example.
75. Iyar is the month following Nisan.
76. Tammuz is a couple of months after Iyar. After Iyar comes Sivan, then Tammuz.
77. Apparently Reuven's other bills of indebtedness are correctly recorded so that Shimon is able to know about them. Shimon's remarks are very easily understood. He realizes that there are two prior loans against Reuven's property, thus diminishing the likelihood of him ever collecting his money should Reuven default.
78. The document is the one without kinyan. See footnote 38.
79. At this point R. Nissim gives a legal decision on what the correct judicial response is to this example of a conspiracy to defraud. This all ultimately explains why we begin our calculations of the year in Nisan by emphasizing that judges have a way to decide the beginning of each year. This does not deal directly with the problem of dating but with establishing the validity of a contract.
80. As above, the questions that are being answered are objectives or dialectics that are being anticipated by R. Nissim.
81. See footnote 38. The literal translation of this phrase is but a caption to remind the reader of what is being commented on at that juncture.
82. R. Nissim is suggesting that through ratiocination the other ways are apparent.
83. The period that elapsed is still within the ninth year of the king, six months later.
84. Heshvan is the month after Tishri, also in this case in the ninth year.
85. Baba Metzia 12b. R. Nissim is quoting from a discussion that attempts to decide the disposition of a found deed that might still be valid. The quoted passages raises the spector of the borrower not being lent the money until some time had elapsed.

86. Nisan is the first month of the year.
87. Tishri is the seventh month of the year.
88. The assumption of the Gemorah discussion is that during the time between the drawing up of the bill of indebtedness in Nisan and the actual transfer of money, the borrower could have sold the land to others. The buyers are unaware of any prior claims on the land and assume ownership but lose their purchase and their money by a prior claim.
89. Baba Metzia 17a. "If the second loan was granted on a day after the date given in the note, or on any subsequent date, the note if applied to the second loan, must be regarded as antedated, and therefore it is invalid."
90. The suggestion that the transaction was drawn up, paid and the same transaction was arranged in the same day with the original document is a search for a limiting example. R. Assi in the Gemorah doesn't deny that it couldn't happen, but correctly assumed that it would be a rare occurrence. This would still be a case of an antedated note of indebtedness and thus still invalid.
91. Baba Metzia 17a and Baba Batra 171b. Neither one of these discussions deal directly with the problems of collection of debts. nevertheless, R. Nissim is correct in saying we are able to derive from this that the judges try not to collect from property that is already under lien. This is due to an appreciation of the economic displacement that follows.
92. R. Nissim is referring here to the kind of situation where a creditor does damage to his own claim. This situation is indirectly discussed in the Gemorah of Baba Batra 171b. The Rashi comment to the page develops a scenario in which the debtor loses money but it is also possible for the creditor to lose money in the exigencies, of a situation of a post dated document. Nissim indicates that he has seen this happen before, but since the creditor brings this on himself, he is responsible. The prior assumption might be the protection of the debtor since he is assumed to borrow under duress. The creditor on the other hand is generally less anxious and can look out for his own interests.
93. This is the end of the text in the Assaf and Lewin books. Assaf's reprinting adds more information to the beginning of the text. The short document that follows is a result of the work of Abramson.
94. Our passage seems to be in the middle of a sentence. The prior question might be: why does Gemorah begin its discussion supporting both the Exodus from Egypt and the calculation of the reign of kings in Nisan from a verse that is not found in the Torah? A textual support from the Torah would be more convincing. The question that is asked is: why is a verse concerning the building of the Temple given at all? The response is that the Exodus and the reign of kings are juxtaposed in this verse. R. Nissim will explain the

various objections and counter-suggestions that are raised and refuted in the Gemorah discussion, defending the verse and the calculation of the kings' reign from Nisan.

95. I Kings 6:1.
96. The verse mentioned in footnote 61 gives two coordinates for the commencement of the Temple building. R. Nissim remarks that this is unusual and must be accounted for by understanding the purpose of the Torah. This purpose is twofold, to remind us that Nisan is the month of the Exodus and also the date that kings initiate their reign as evidenced by King Solomon's example.
97. There is a gap in the text.
98. The type of argument presented here could be termed אֶלְכֶּשֶׁת (Hekesh-an analogy), Moses Melziner explains this in his book an Introduction to the Talmud, p. 152. A hekesh "usually denotes a particular kind of analogy, based on the close connection of two subjects in one and the same passage of the Law. R. Nissim has set about to explain the hekesh that is found in the Talmud discussion in Rosh Hashanah 2b.
99. The objection that R. Nissim mentions is raised in the Gemorah discussion in Rosh Hashanah 2b. The objection raises the possibility of a scriptural support for Tishri being the commencement of the reckoning for kings.
100. Numbers 33:38. The verse describes Aaron's demise.
101. The text at this point is unclear and indecipherable. It is apparent though that there is further explanation of the calculations.
102. Ibid.
103. Ibid.
104. Ibid.
105. Ibid.
106. The argument for Av being the fifth month and consequently Nisan being the first month is circular in that which ever month you count - Tishri or Nisan - will lead you to the desired conclusion as to Shevat or Av.
107. This argument seems to be that we know when the Exodus from Egypt was and therefore all objections are senseless.

Bibliography

- Abramson, Shraga. Be-Markazim Ve-Tefustot Be-Tekufat Ha-Goanim.
Jerusalem, Mossad HaRav Kook, 1965.
- Abramson, Shraga. R. Nissim Gaon Libelli Quinque. Jerusalem, Kohut
Memorial Foundation, 1965.
- Abramson, Shraga. Inyanot Be- Sifrut Ha-Goanim. Jerusalem, Mossad
HaRav Kook, 1974.
- Assaf, Simha. Me-Sifrut Ha-Goanim. Jerusalem, Barom, 1933.
- Assaf, Simha. Tekufat Ha-Goanim Ve-Sifrutah. Jerusalem, Mossad
HaRav Kook, 1967.
- Baron, Salo W. A Social and Religious History of the Jews. 15 Volumes.
Philadelphia, The Jewish Publication Society of America, 1958.
- Bornstein, Haim Yehiel. Ha-Mahloket Ben R. Saddia Gaon Ve-Ben Meir.
Warsaw, Sholdberg and Co., 1904.
- Cohen, Gerson D. A Critical Edition with a Translation and Notes of The
Book of Tradition by Abraham Ibn Daud. Philadelphia, Jewish
Publication Society of America, 1967.
- Ginzberg, Louis. Geniza Studies, Vol. II. New York, Hermon Press, 1968 rpt.
- Goitein, S.D. Letter of Medieval Jewish Traders. Princeton, Princeton
University Press, 1973.
- Goitein, S.D. A Mediterranean Society: The Jewish Communities of the
Arab World as Portrayed in the Documents of the Cairo Geniza.
Volumes I and II. Berkeley and Los Angeles, University of California
Press, 1967 and 1971.
- Goitein, S.D. Studies in Islamic History and Institutions. Leiden,
E. J. Brill, 1966.

- Goldenthal, Jacob. Ha-Mafteah Shel Rabbi Nissim ben Jacob. Wien,
K. K. Hof-und-Staats-Druckerei, 1847.
- Gulack, Asher. Yesodia Ha-Mishpat Ha-Ivri. Volumes I-IV. Tel Aviv,
D'vir, 1934 rpt.
- Hirschberg, H. A. (J.W.) Hiber Yafe Me-Ha-Yeshua. Jerusalem, Mossad
HaRav Kook, 1969.
- Hirschberg, H. A. (S.W.) History of the Jews in North Africa. Volume I.
Leiden, E. J. Brill, 1975.
- Lewin, B. M. Ginze Kedem. Jerusalem, Raphael Ha-Cohen, 1934.
- Lewin, B. M. Otzar Ha-Gaonim. Volume III. Jerusalem, The Hebrew
University Press Association, 1932.
- Mann, Jacob. The Jews in Egypt and in Palestine Under the Fatamid Caliphs.
London, Oxford University Press, 1922.
- Mann, Jacob. Texts and Studies in Jewish History and Literature. Volume I.
New York, KTAV Publishing House, Inc., 1972 rpt.
- Poznanski, S. J. "Anshe Kairouan" (Harkavy Festschrift.) Jerusalem,
Stvi Hirsch Istavasky, 1968 rpt.
- Rosenblatt, S. Saddia Gaon, The Book of Beliefs and Opinions. New Haven,
Yale University Press, 1948.